



Federal Communications Commission  
Washington, D.C. 20554

June 20, 2007

**DA 07-2712**

In Reply Refer to:  
1800B3-IB

Released: June 20, 2007

Patrick J. Vaughn, Esq.  
General Counsel  
American Family Association, Inc.  
P.O. Drawer 2440  
Tupelo, MS 38803

Re: Comparative Consideration of 76 Groups of  
Mutually Exclusive Applications for Permits to  
Construct New or Modified Noncommercial  
Educational FM Stations

**Petition for Reconsideration**

Dear Mr. Vaughn:

We have before us a Petition for Reconsideration ("Petition") filed on April 26, 2007, by American Family Association ("AFA"), as amended on May 10, 2007, concerning a March 27, 2007, Commission Memorandum Opinion and Order.<sup>1</sup> The *Omnibus Order* applied the Commission's noncommercial educational ("NCE") comparative selection criteria<sup>2</sup> to seventy-six groups of mutually exclusive NCE FM applications and tentatively selected one winner in each group. The Commission also delegated authority to the Media Bureau ("Bureau") to consider petitions to deny the tentative selectees and to grant and dismiss applications in accordance with these tentative determinations in cases where no substantial and material question of fact is raised through the petition to deny process. For the reasons set forth below, we dismiss AFA's Petition.

AFA seeks reconsideration of the Commission's tentative conclusions with respect to twenty of the seventy-six groups<sup>3</sup> evaluated in the *Omnibus Order*.<sup>4</sup> However, Section 1.106(a)(1) of the

<sup>1</sup> See *Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, FCC 07-40 (rel. Mar. 27, 2007) ("*Omnibus Order*"). Oppositions were filed by Iowa State University, University of Northern Iowa, University of Nevada, Southwest Allen County Schools, Spokane Public Radio, Temple University, University of Wyoming, and University of Kentucky. AFA has filed Replies to each Opposition.

<sup>2</sup> See 47 C.F.R. §§ 73.7000 – 05.

<sup>3</sup> See *MX Groups With a Religious Network Applicant and a 'Traditional' CPB/NTIA Funded Applicant* (Petition, Exhibit 1). AFA objects to the tentative selection of the following applicants in the following respective groups: Group 94123E, Iowa State University; Group 95072E, University of Nevada; Group 95076E, Iowa State University; Group 960813, University of Northern Iowa; Group 961011, University of Northern Iowa; Group 970111, University of Northern Iowa; Group 970312, Lincoln High School; Group 970514, Southwest Allen County Schools; Group 970520, University of Northern Iowa; Group 970823, Spokane Public Radio; Group 971015, Marshalltown Education Plus, Inc.; Group 971019, Temple University; Group 9803HL, Coos Bay School District 9; Group 980401, University of Wyoming; Group 98043S, University of Kentucky; Group 980605, Iowa State

(footnote continued...)

Commission's Rules (the "Rules") specifically prohibits petitions for reconsideration of interlocutory actions.<sup>5</sup> An interlocutory action is an interim determination on a matter involving an application; it does not grant or deny the application. The *Omnibus Order* was not a final action with regard to any of the tentatively selected applications.<sup>6</sup> The Commission determined that two of the seventy-six NCE FM mutually exclusive groups should be processed as singletons, and tentatively selected seventy-four applications from the remaining seventy-four groups for grant. Confirming the interlocutory nature of the *Omnibus Order*, the Commission emphasized that "[o]ur selection is 'tentative' because petitions to deny may be filed against the applicant tentatively selected pursuant to these point system determinations."<sup>7</sup>

Accordingly, IT IS ORDERED, That the Petition for Reconsideration filed on April 26, 2007, by American Family Association, as amended May 10, 2007, IS DISMISSED.<sup>8</sup>

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Iowa State University  
University of Nevada  
University of Northern Iowa  
Lincoln High School  
Southwest Allen County Schools  
Spokane Public Radio  
Marshalltown Education Plus, Inc.  
Temple University  
Coos Bay School District 9

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University; Group 981003, Henderson State University; Group 981010, Billings Community Cable Corporation; Group 990101, University of Northern Iowa; Group 9901XP, Merritt Island Public Radio.

<sup>4</sup> The caption of AFA's Petition lists all seventy-six groups considered in the *Omnibus Order*. It appears, however, that AFA objects only to the groups listed in Exhibit 1, *i.e.*, where a "traditional" applicant allegedly eligible for funding from the Corporation for Public Broadcasting or National Telecommunications Information Administration was tentatively selected over a "religious network applicant." *See* Petition at 1-2; Exhibit 1.

<sup>5</sup> *See* 47 C.F.R. § 1.106(a)(1).

<sup>6</sup> *See Bennet v. Spear*, 520 U.S. 154, 177 (1997) (for agency action to be final, it "must mark the 'consummation' of the agency's decisionmaking process-it must not be of a merely tentative or interlocutory nature.") (internal quotes and cites omitted).

<sup>7</sup> *See Omnibus Order*, \_\_ FCC Rcd at \_\_ (¶ 1). Because the *Omnibus Order* was not a final decision, the provision of the Rules that the Commission, rather than the staff, will act on petitions for reconsideration of "final" Commission actions is inapplicable. *See* 47 C.F.R. § 1.106(a)(1).

<sup>8</sup> Upon final action, *i.e.*, grant, dismissal, or denial of any application identified in the *Omnibus Order*, a party may seek reconsideration or review of such action consistent with the requirements of the Rules. *See* 47 C.F.R. §§ 1.106(b)(1) and 1.115. *See also American Family Ass'n v. FCC*, 365 F.3d at 1168 ("Any applicants whose applications are denied can seek review of those denials in this Court, and then have their as-applied claims tested.").

University of Wyoming  
University of Kentucky  
Henderson State University  
Billings Community Cable Corporation  
Merritt Island Public Radio